

**ASSEMBLY BILL**

**No. 263**

**Introduced by Assembly Member Oropeza**

February 4, 2003

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An act to amend Section 24410 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 263, as introduced, Oropeza. Bank and corporation taxes: deduction: insurance company dividends.

The Bank and Corporation Tax Law allows various deductions in computing the income that is subject to the taxes imposed by that law, including a deduction for dividends received by a corporation, commercially domiciled in California, from an insurance company that is subject to insurance tax. Existing law provides that a corporation may only deduct dividends that were paid from the insurance company's California source income. The amount of the dividends eligible for a deduction is further limited and is determined by multiplying the total amount of the dividends by an apportionment factor, equal to the ratio of gross income from California sources to all gross income of the insurance company paying the dividends.

This bill would delete these requirements and limitations, and would allow any corporation to take a dividend received deduction, including a corporation that is not commercially domiciled in California with respect to certain open years, and would make legislative findings and declarations in connection thereto.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 24410 of the Revenue and Taxation Code is amended to read:

24410. (a) ~~Dividends~~ *For taxable years ending on or after December 1, 1997, there shall be allowed as a deduction to a taxpayer \_\_\_\_\_ percent of the dividends received by a corporation commercially domiciled in California during the taxable year from an insurance company subject to tax imposed by Part 7 (commencing with Section 12001) of this division at the time of the payment of the dividends and, whether or not the insurance company is engaged in business in California, if at least 80 percent of each class of its stock was then being owned by the corporation receiving the dividend.*

~~(b) The deduction under this section shall be limited to that portion of the dividends received which are determined to be paid from income from California sources determined pursuant to subdivision (c).~~

~~(c) Dividends paid from California sources shall be determined by multiplying the amount of the dividends by an apportionment factor equal to the ratio of gross income from California sources to all gross income of the company. Gross income from California sources equals total gross income less dividends from other insurance companies multiplied by the average of the following three factors:~~

~~(1) A gross receipts factor, the denominator of which shall include all receipts, other than dividends from another insurance company, regardless of the nature or source from which derived. The numerator of which shall include all gross receipts, other than dividends from another insurance company, derived from or attributable to this state. With respect to premiums, only receipts which were subject to tax under Part 7 (commencing with Section 12001) of this division, shall be included in the numerator, and with respect to income from intangibles they shall be attributable to the commercial domicile of the insurance company.~~

~~(2) A payroll factor determined under the provisions of the Uniform Division of Income for Tax Purposes Act, Chapter 17, Article 2 of this part.~~

~~(3) A property factor, determined under the provisions of the Uniform Division of Income for Tax Purposes Act provided for in~~

1 ~~Article 2 (commencing with Section 25120) of Chapter 17 of this~~  
2 ~~part, provided that for the purposes of this paragraph the property~~  
3 ~~factor shall include all intangible investment property, which~~  
4 ~~intangible property shall be allocated to the commercial domicile~~  
5 ~~of that insurance company.~~

6 ~~(4) Plus the portion of the dividends received from another~~  
7 ~~insurance company determined to be paid from California source~~  
8 ~~income pursuant to the formula set forth in paragraphs (1) through~~  
9 ~~(3) based upon the receipts, payroll and property of that other~~  
10 ~~insurance company.~~

11 ~~(d) The insurance company from which the dividends are~~  
12 ~~received shall furnish that information as the Franchise Tax Board~~  
13 ~~may require to determine the allocation formula and the Franchise~~  
14 ~~Tax Board may adopt those regulations as it deems necessary to~~  
15 ~~effectuate the purpose of this section.~~

16 ~~Nothing in this section shall be construed to limit or affect in any~~  
17 ~~manner any other provisions of this part.~~

18 ~~(b) Section 24425 does not apply to any expense that is related~~  
19 ~~to dividends that are deductible under subdivision (a) of this~~  
20 ~~section.~~

21 SEC. 2. The Legislature finds and declares all of the  
22 following:

23 (a) The amendments made by this act to Section 24410 of the  
24 Revenue and Taxation Code are necessary to provide for the  
25 equitable tax treatment of insurance company dividends in light of  
26 the following circumstances:

27 (1) The California Court of Appeal in a final decision in the  
28 case of Ceridian Corp. v. Franchise Tax Board (2000) 85  
29 Cal.App.4th 875, held that the portions of Section 24410 of the  
30 Revenue and Taxation Code that refer to corporations  
31 “commercially domiciled” in California and to insurance  
32 company dividends paid from “income from California sources”  
33 violated the commerce clause of the United States Constitution. As  
34 a consequence of this decision, uncertainty exists regarding  
35 whether Section 24410 of the Revenue and Taxation Code remains  
36 in effect and provides for a full dividends-received deduction or  
37 whether it was invalidated in its entirety by the Ceridian decision  
38 with the result that no dividends-received deduction is available  
39 with respect to insurance company dividends.

(2) In light of the foregoing, the amendment to Section 24410 of the Revenue and Taxation Code by this act is required to address this uncertainty and the deduction provided in this act with respect to dividends received from insurance subsidiaries represents a fair and equitable result for all concerned.

(3) The amendments to Section 24410 of the Revenue and Taxation Code made by this act are in furtherance of a public purpose in avoiding the unintended impairment of the ability of California-based insurance holding companies to compete nationally and the detrimental effect upon the state economy of an uncertain and potentially unfair result that discourages the establishment and expansion of California insurance-related activities by out-of-state insurance holding companies.

(4) The retroactive application of the amendments to Section 24410 of the Revenue and Taxation Code made by this act to tax years ending on and after December 1, 1997, is in furtherance of a valid public purpose and sound tax policy. The Legislature originally enacted Section 24410 of the Revenue and Taxation Code in 1968, and, had it known then of the constitutional infirmities of the statute adjudicated in the Ceridian case, would have preferred the dividend relief provided by this act to the prospect that Section 24410 of the Revenue and Taxation Code might fall in its entirety and provide no dividend relief whatsoever. The retroactive application of the amendments to Section 24410 of the Revenue and Taxation Code made by this act promotes sound tax policy by affording equitable tax relief to the many taxpayers who relied upon Section 24410 of the Revenue and Taxation Code for dividends-received deductions that now may be in jeopardy.

(b) Subdivision (b) of Section 24410 of the Revenue and Taxation Code, which declares Section 24425 of the Revenue and Taxation Code to be inapplicable to the dividends-received deductions for tax years commencing on and after December 1, 1997, represents an integral part of the legislative resolution of the uncertainty created by the Ceridian decision, and is accordingly added by this act in furtherance of the same valid public purposes identified above.

(c) For tax years commencing prior to December 1, 1997, however, the Ceridian decision has required a full dividends received deduction under Section 24410 of the Revenue and

1 Taxation Code for taxpayers procedurally entitled to assert claims  
2 for refund thereto, and the Franchise Tax Board maintains that  
3 Section 24425 of the Revenue and Taxation Code applies to offset  
4 expense deductions associated with these dividends. In light of this  
5 pending controversy, no inferences should arise from the addition  
6 of subdivision (b) of Section 24410 of the Revenue and Taxation  
7 Code by this act with respect to the application of Section 24425  
8 of the Revenue and Taxation Code to dividends-received  
9 deductions under Section 24410 of the Revenue and Taxation  
10 Code for tax years commencing before December 1, 1997.

11 SEC. 3. The Legislature further finds and declares that the tax  
12 treatment of insurance company dividends under Section 24410 of  
13 the Revenue and Taxation Code, as amended by this act, is  
14 unrelated to and distinguishable from the tax treatment of the  
15 deduction of general corporate dividends under Section 24402 of  
16 the Revenue and Taxation Code and the application of Section  
17 24425 of the Revenue and Taxation Code to those deductions. In  
18 that regard, the Legislature recognizes that California combined  
19 reporting groups with insurance affiliates differ from general  
20 corporations insofar as the insurance affiliates are excluded from  
21 the California combined report, and therefore cannot eliminate  
22 insurance subsidiary dividends under Section 25106 of the  
23 Revenue and Taxation Code, whereas general corporate unitary  
24 affiliates may do so. The Legislature further recognizes that  
25 California combined reporting groups with insurance affiliates are  
26 subject to gross premiums taxation over and above the corporate  
27 income tax, whereas general corporations are not.

28 SEC. 4. This act provides for a tax levy within the meaning of  
29 Article IV of the Constitution and shall go into immediate effect.

